

113TH CONGRESS
1ST SESSION

S. 1691

To amend title 5, United States Code, to improve the security of the United States border and to provide for reforms and rates of pay for border patrol agents.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2013

Mr. TESTER (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title 5, United States Code, to improve the security of the United States border and to provide for reforms and rates of pay for border patrol agents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Patrol Agent
5 Pay Reform Act of 2013”.

6 **SEC. 2. BORDER PATROL RATE OF PAY.**

7 (a) PURPOSE.—The purposes of this Act are—

8 (1) to strengthen U.S. Customs and Border
9 Protection and ensure border patrol agents are suffi-

1 ciently ready to conduct necessary work and that
2 agents will perform overtime hours in excess of a 40-
3 hour work week based on the needs of the employing
4 agency; and

5 (2) to ensure U.S. Customs and Border Protec-
6 tion has the flexibility to cover shift changes and re-
7 tains the right to assign scheduled and unscheduled
8 work for mission requirements and planning based
9 on operational need.

10 (b) RATES OF PAY.—Subchapter V of chapter 55 of
11 title 5, United States Code, is amended by inserting after
12 section 5549 the following:

13 **“§ 5550. Border patrol rate of pay**

14 “(a) DEFINITIONS.—In this section—

15 “(1) the term ‘available to work’ means a bor-
16 der patrol agent is generally and reasonably acces-
17 sible by U.S. Customs and Border Protection to per-
18 form unscheduled duty based on the needs of U.S.
19 Customs and Border Protection;

20 “(2) the term ‘border patrol agent’ means an
21 individual who is performing functions included
22 under position classification series 1896 (Border Pa-
23 trol Enforcement) of the Office of Personnel Man-
24 agement, or any successor thereto, including per-
25 forming covered border patrol activities;

1 “(3) the term ‘covered border patrol activities’
2 means a border patrol agent is—

3 “(A) detecting and preventing illegal entry
4 and smuggling of aliens, commercial goods, nar-
5 cotics, weapons, or contraband into the United
6 States;

7 “(B) arresting individuals suspected of
8 conduct described in subparagraph (A);

9 “(C) attending training authorized by U.S.
10 Customs and Border Protection;

11 “(D) on approved annual, sick, or adminis-
12 trative leave;

13 “(E) on ordered travel status;

14 “(F) on official time, within the meaning
15 of section 7131;

16 “(G) on excused absence with pay for relo-
17 cation purposes;

18 “(H) on light duty due to injury or dis-
19 ability;

20 “(I) performing administrative duties or
21 mission critical work assignments while main-
22 taining law enforcement authority;

23 “(J) caring for the canine assigned to the
24 border patrol agent, which may not exceed 1
25 hour per day; or

1 “(K) engaged in an activity similar to an
2 activity described in subparagraphs (A) through
3 (J) while temporarily away from the regular
4 duty assignment of the border patrol agent;

5 “(4) the term ‘level 1 border patrol rate of pay’
6 means the hourly rate of pay equal to 1.25 times the
7 otherwise applicable hourly rate of basic pay of the
8 applicable border patrol agent;

9 “(5) the term ‘level 2 border patrol rate of pay’
10 means the hourly rate of pay equal to 1.125 times
11 the otherwise applicable hourly rate of basic pay of
12 the applicable border patrol agent; and

13 “(6) the term ‘work period’ means a 14-day bi-
14 weekly pay period.

15 “(b) RECEIPT OF BORDER PATROL RATE OF PAY.—

16 “(1) VOLUNTARY ELECTION.—

17 “(A) IN GENERAL.—Not later than 30
18 days before the first day of each year beginning
19 after the date of enactment of this section, a
20 border patrol agent shall make an election
21 whether the border patrol agent shall, for the
22 following year—

23 “(i) be assigned to the level 1 border
24 patrol rate of pay;

1 “(ii) be assigned the level 2 border pa-
2 trol rate of pay; or

3 “(iii) decline to be assigned the level
4 1 border patrol rate of pay or the level 2
5 border patrol rate of pay.

6 “(B) PROCEDURES.—The Director of the
7 Office of Personnel Management shall establish
8 procedures for elections under subparagraph
9 (A).

10 “(C) INFORMATION REGARDING ELEC-
11 TION.—Not later than 60 days before the first
12 day of each year beginning after the date of en-
13 actment of this section, U.S. Customs and Bor-
14 der Protection shall provide each border patrol
15 agent with information regarding each type of
16 election available under subparagraph (A) and
17 how to make such an election.

18 “(D) FAILURE TO ELECT.—A border pa-
19 trol agent who fails to make a timely election
20 under subparagraph (A) shall be deemed to
21 have made an election to be assigned to the
22 level 1 border patrol rate of pay under subpara-
23 graph (A)(i).

24 “(E) SENSE OF CONGRESS.—It is the
25 sense of Congress that U.S. Customs and Bor-

1 der Protection should take such action as is
2 necessary to ensure that not more than 10 per-
3 cent of the border patrol agents stationed at a
4 location decline to be assigned to the level 1
5 border patrol rate of pay or the level 2 border
6 patrol rate of pay.

7 “(2) LEVEL 1 BORDER PATROL RATE OF PAY.—

8 For a border patrol agent who has in effect an elec-
9 tion under paragraph (1)(A)(i)—

10 “(A) the border patrol agent shall be
11 scheduled to work, for 5 days per week—

12 “(i) 8 hours of regular time per day;

13 and

14 “(ii) 2 additional hours of scheduled
15 overtime during each day the border patrol
16 agent is scheduled to work under clause
17 (i);

18 “(B) for the hours of regular time work
19 described in subparagraph (A)(i), the border
20 patrol agent shall receive pay at the level 1 bor-
21 der patrol rate of pay;

22 “(C) for the hours of regularly scheduled
23 overtime work described in subparagraph
24 (A)(ii), the border patrol agent shall not re-
25 ceive—

1 “(i) additional compensation under
2 this section or any other provision of law;
3 or

4 “(ii) compensatory time off;

5 “(D) any hours during which the border
6 patrol agent is available to work during a work
7 period shall be included in the hours of regular
8 time or regularly scheduled overtime scheduled
9 under subparagraph (A);

10 “(E) shall receive compensatory time off or
11 pay at the overtime hourly rate of pay for hours
12 of work in excess of 100 hours during a work
13 period, as determined in accordance with sec-
14 tion 5542(a)(7); and

15 “(F) shall be charged leave in increments
16 of 8 hours for 1 shift of leave, regardless of the
17 length of the shift.

18 “(3) LEVEL 2 BORDER PATROL RATE OF PAY.—
19 For a border patrol agent who has in effect an elec-
20 tion under paragraph (1)(A)(ii)—

21 “(A) the border patrol agent shall be
22 scheduled to work, for 5 days per week—

23 “(i) 8 hours of regular time per day;
24 and

1 “(ii) 1 additional hour of scheduled
2 overtime during each day the border patrol
3 agent is scheduled to work under clause
4 (i);

5 “(B) for the hours of regular time work
6 described in subparagraph (A)(i), the border
7 patrol agent shall receive pay at the level 2 bor-
8 der patrol rate of pay;

9 “(C) for the hours of regularly scheduled
10 overtime work described in subparagraph
11 (A)(ii), the border patrol agent shall not re-
12 ceive—

13 “(i) additional compensation under
14 this section or any other provision of law;
15 or

16 “(ii) compensatory time off;

17 “(D) any hours during which the border
18 patrol agent is available to work during a work
19 period shall be included in the hours of regular
20 time or regularly scheduled overtime scheduled
21 under subparagraph (A);

22 “(E) shall receive compensatory time off or
23 pay at the overtime hourly rate of pay for hours
24 of work in excess of 90 hours during a work pe-

1 riod, as determined in accordance with section
2 5542(a)(7); and

3 “(F) shall be charged leave in increments
4 of 8 hours for 1 shift of leave, regardless of the
5 length of the shift.

6 “(4) BASIC BORDER PATROL RATE OF PAY.—
7 For a border patrol agent who has in effect an elec-
8 tion under paragraph (1)(A)(iii)—

9 “(A) the border patrol agent shall be
10 scheduled to work 8 hours of regular time per
11 day and 5 days per week;

12 “(B) any hours during which the border
13 patrol agent is available to work during a work
14 period shall be included in the hours of regular
15 time scheduled under subparagraph (A); and

16 “(C) the border patrol agent shall receive
17 compensatory time off or pay at the overtime
18 hourly rate of pay for hours of work in excess
19 of 80 hours during a work period, as deter-
20 mined in accordance with section 5542(a)(7).

21 “(c) ELIGIBILITY FOR OTHER PREMIUM PAY.—A
22 border patrol agent—

23 “(1) shall receive premium pay for night work
24 in accordance with subsections (a) and (b) of section
25 5545 and Sunday and holiday pay in accordance

1 with section 5546, without regard to the election of
2 the border patrol agent under subsection (b)(1)(A),
3 except that section 5546(d) shall not apply and eligi-
4 bility for pay for, and the rate of pay for, any over-
5 time work shall be determined in accordance with
6 this section and section 5542(a)(7); and

7 “(2) shall not be eligible for any other form of
8 premium pay under this title, except as provided in
9 section 5542(a)(7).

10 “(d) TREATMENT AS BASIC PAY.—Any pay received
11 at the level 1 border patrol rate of pay or the level 2 border
12 patrol rate of pay or pay described in subsection (b)(3)(B)
13 shall be treated as part of basic pay for—

14 “(1) purposes of sections 5595(c), 8114(e),
15 8331(3), and 8704(c);

16 “(2) any other purpose that the Office of Per-
17 sonnel Management may by regulation prescribe;
18 and

19 “(3) any other purpose expressly provided for
20 by law.

21 “(e) AUTHORITY TO REQUIRE OVERTIME WORK.—
22 Nothing in this section shall be construed to limit the au-
23 thority of U.S. Customs and Border Protection to require
24 a border patrol agent to perform hours of overtime work
25 in accordance with the needs of U.S. Customs and Border

1 Protection, including if needed in the event of a local or
2 national emergency.”.

3 (c) OVERTIME WORK.—Section 5542(a) of title 5,
4 United States Code, is amended by adding at the end the
5 following:

6 “(7)(A) In this paragraph, the term ‘border patrol
7 agent’ has the meaning given that term in section 5550.

8 “(B) Notwithstanding the matter preceding para-
9 graph (1) or paragraphs (1) and (2), for a border patrol
10 agent who has in effect an election to be assigned to the
11 level 1 border patrol rate of pay under section
12 5550(b)(1)(A)(i)—

13 “(i) except as provided in subparagraph (E),
14 hours of work in excess of 100 hours during a 14-
15 day biweekly pay period shall be overtime work; and

16 “(ii) the border patrol agent—

17 “(I) shall receive pay at the overtime hour-
18 ly rate of pay (as determined in accordance
19 with paragraphs (1) and (2)) for hours of over-
20 time work that are officially ordered or ap-
21 proved in advance of the work assignment; and

22 “(II) shall receive compensatory time off
23 for any hours of overtime work that are not
24 hours of overtime work described in subclause
25 (I).

1 “(C) Notwithstanding the matter preceding para-
2 graph (1) or paragraphs (1) and (2), for a border patrol
3 agent who has in effect an election to be eligible for the
4 level 2 border patrol rate of pay under section
5 5550(b)(1)(A)(ii)—

6 “(i) except as provided in subparagraph (E),
7 hours of work in excess of 90 hours during a 14-day
8 biweekly pay period shall be overtime work; and

9 “(ii) the border patrol agent—

10 “(I) shall receive pay at the overtime hour-
11 ly rate of pay (as determined in accordance
12 with paragraphs (1) and (2)) for hours of over-
13 time work that are officially ordered or ap-
14 proved in advance of the work assignment; and

15 “(II) shall receive compensatory time off
16 for any hours of overtime work that are not
17 hours of overtime work described in subclause
18 (I).

19 “(D) Notwithstanding the matter preceding para-
20 graph (1) or paragraphs (1) and (2), for a border patrol
21 agent who has in effect an election under section
22 5550(b)(1)(A)(iii)—

23 “(i) except as provided in subparagraph (E),
24 hours of work in excess of 80 hours during a 14-day
25 biweekly pay period shall be overtime work; and

1 “(ii) the border patrol agent—

2 “(I) shall receive pay at the overtime hour-
3 ly rate of pay (as determined in accordance
4 with paragraphs (1) and (2)) for hours of over-
5 time work that are officially ordered or ap-
6 proved in advance of the work assignment; and

7 “(II) shall receive compensatory time off
8 for any hours of overtime work that are not
9 hours of overtime work described in subclause
10 (I).

11 “(E)(i) Except as provided in clause (ii), during a
12 14-day biweekly pay period, a border patrol agent shall
13 not perform and may not receive compensatory time off
14 for more than 8 hours of overtime work.

15 “(ii) U.S. Customs and Border Protection may, as
16 it determines appropriate, waive the limitation under
17 clause (i) for hours of overtime work, but such waiver
18 must be approved in advance of any work being performed
19 that would be subject to compensatory time under sub-
20 section (B)(ii)(II), (C)(ii)(II), or (D)(ii)(II).

21 “(F) A border patrol agent—

22 “(i) may not earn more than 240 hours of com-
23 pensatory time off during a year; and

1 “(ii) shall use any hours of compensatory time
2 off not later than 1 year after the date on which the
3 compensatory time off is accrued.”.

4 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) Section 13(a) of the Fair Labor Standards
6 Act of 1938 (29 U.S.C. 213(a)) is amended—

7 (A) in paragraph (16), by striking “or”
8 after the semicolon;

9 (B) in paragraph (17), by striking the pe-
10 riod at the end and inserting “; or”; and

11 (C) by adding at the end the following:

12 “(18) any employee who is a border patrol
13 agent, as defined in section 5550(a) of title 5,
14 United States Code.”.

15 (2) The table of sections for chapter 55 of title
16 5, United States Code, is amended by inserting after
17 the item relating to section 5549 the following:

“5550. Border patrol rate of pay.”.

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